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C.P.-S.134917–1953-6–1,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate Provincial Division.)
(Provinsiale Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

Comm^r of Customs & Excise (& Ano) *Appellant,*

versus

Metal Salvage Coy. Ltd. *Respondent.*

Appellant's Attorney / *Prokureur vir Appellant* Nauta & Vd. W. *Respondent's Attorney* / *Prokureur vir Respondent* Arnon & Arnon.

Appellant's Advocate / *Advokaat vir Appellant* L. v. R. Mullin Q.C. *Respondent's Advocate* / *Advokaat vir Respondent* H. Smithes Q.C.

Set down for hearing on / *Op die rol geplaas vir verhoor op* Monday, 16th November, 1959.

(CPD) (A)

1 : 6 (9.11)

9.45 a.m. 2.10 p.m. C. A. V.

Registrar
Se

Partes: Dansdag 3 Desember 1959

appèl staag uit kaste en die uitspraak van die Hof a quo word vernader na en van vonnis een die eiser uit kaste, met uitsluiting van die kaste van Eksepsie.

Steyn. H.R.
Botha Wn. A.R.
Hiemstra Wn. A.R.
van Blerk A.R.
Schreiner A.R. Verskil.

Registrar
Griffier

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(Appélafdeling)

Insake:

Ontvanger van Doeane en Aksyns,Kaapstad,
en Kommisaris van Doeane en Aksyns. Appellant

en

Metal Salvage Company (Proprietary)Ltd. Respondent

Verhoor deur:Steyn H.R.Schreiner,Van Blerk A.RR, Botha en Holmes Wn.A.RR.

Verhoordatum:16 November,1959. Leweringsdatum: 3 — 12 — 1959

U I T S P R A A K

STEYN H.R. :- 'n Uiteensetting van die feite en van die toepaslike wetgewing is in die uitspraak van my kollega SCHREINER to vind. Item (c) onder die hoof "Kontroleur van Nie-ysterhoudende Stowwe" in Bylae A van die Goewermentskennisgewing waaroor dit gaan, verbied die uitvoer uit die Unie sonder permit van o.a. brons na ander lande dan slegs Basoetoland,Swaziland en die Protektoraat van Bechuanaland. Item (8) onder die ooreenstemmende hoof in Bylae B lê 'n dergelike verbod op ten aansien van " silikon en legerings wat minstens 3.25 persent silikon bevat", wat betref uitvoer na ander lande dan "na die " Verenigde Koninkryk van Groot-Brittanje en Noord-Ierland, of enige

"Britse/.....

"Britse Dominium, kolonie (uitgesonderd Hong Kong), besitting, "protektoraat of mandaatgebied, of na die Verenigde State van "Amerika." Die vraag is of die onderhawige besending bronsmetaal, ten spyte van die verbod in item (c), ingevolge item (8) sonder 'n permit na die Verenigde Koninkryk uitgevoer kon word, omdat dit 'n alloi of legering is en meer dan 3.25 persent silikon bevat.

By die beantwoording van hierdie vraag is dit nodig om die oogmerke van die kennisgewing en sy samestelling as geheel in ag te neem. Dit is in 1954 uitgevaardig kragtens 'n Oorlogsmaatreël wat o.a. oor die beheer van oorlogsvoorrade handel, die behoud en instandhouding waarvan as noodsaaklik beskou was, en wat na die oorlog van krag gehou is ~~gebly het~~ ten einde uitvoerbeheer voort te sit. Die hoofdoel van die kennisgewing is om die uitvoer sonder permit van alle goedere in Bylaes A en B genoem, te verbied. Dit is die eerste en oorheersende bepaling. Daarmee gaan egter gepaard 'n verskil wat getrek word tussen die plaaslike protektorate aan die een kant en die lande van die Gemenebes en die Verenigde State aan die ander kant, wat ek die wyere groep lande sal noem. Die goedere waarop die kennisgewing slaan word verdeel in twee Bylaes, waarna ek as A en B sal verwys. Die goedere in A vermeld mag sonder permit uitgevoer word slegs na die plaaslike protektorate. Dié in B vermeld mag

sonder/.....

sonder permit uitgevoer word alleen na die wyere groep lande. Die gevolg is dat al die betrokke goedere sonder permit na die plaaslike protektorate uitgevoer mag word, maar na genoemde wyere groep, met uitsluiting van daardie protektorate, slegs die goedere in B genoem. Met betrekking tot die goedere in A genoem, is dit klaarblyklik die bedoeling om 'n verbod op uitvoer sonder permit na die wyere groep/lande, met bedoelde uitsluiting, in te stel en te handhaaf. Dit is die enigste bestaansrede vir A en B. Sonder daardie bedoeling sou die verdeling sinloos wees; en om presies dieselfde goed in beide A en B te noem, sou die uitsluitlike oogmerk van die verdeling pro tanto verydel. Hieruit volg dat 'n algemene benadering as sou B gerig wees op 'n verslapping ten gunste van die wyere groep lande ook ten aansien van goedere in A, nie geregverdig sou kan word nie. Die funksie van B is nie om te dien as uitsonderings op A nie. Vir sulke uitsonderings word in Bylae C voorsiening gemaak, onder die opskrif: "Goedere in Bylae A wat sonder 'n permit uitgevoer kan word." Die regte benadering, meen ek, is die teenoorgestelde, nl., dat die verbod ten aansien van goedere in A na bedoelde lande, nie deur die vergunning ten aansien van uitvoer van goedere in B opgehef of gewysig word nie, behalwe waar dit duidelik blyk die geval te wees.

Met 'n erkele uitsondering, dek die twee Bylaes mekaar dan inderdaad ook nie. Onder die hoof

"Kontroleur/.....

"Kontroleur van Motorvoertuie" kom weliswaar in albei lyste identiese items voor, maar in A begin die lys met die volgende belangrike inkorting van sy toepaslikheid: "Die items hieronder aangedui, as hulle uit nie-sterlinggebiede in 'n gemonteerde toestand of as los dele ingevoer word." 'n Dergelike inkorting verskyn nie onder hierdie hoof in B nie. Dit lê voor die hand, meen ek, dat vir sover daar hier tweevoudige vermelding van dieselfde goed voorkom, die bedoeling nie kan wees om deur 'n onnodige en omslagtige oorvleueling die opname van die goed in A, met die verbod op uitvoer na ander lande van die wyere groep dan die plaaslike protektorate, maar om te bewerkstellig dat daardie goed, ondanks hul opname in B, nie na bedoelde lande sonder permit uitgevoer kan word nie, as hul uit nie-sterlinggebiede afkomstig is. Wat sulke dubbel-items betref, word die meer algemene beskrywing in B, deur die uitdruklik verengde beskrywing in A, beperk tot goedere wat wel uit sterling-gebiede afkomstig is. Dit geld ook wat die drievoudige vermelding van olifantskrapers betref, tweemaal onder hierdie hoof in A en B onderskeidelik en eenmaal in item (9) onder die hoof "Diverse" in B. Vir die res kan ek geen identiese goedere in albei lysto vind nie, behalwe silikon wat as item (m) in A en as deel van item (8) in B onder die hoof "Kontroleur van Nie-ysterhoudende Stowwe" voorkom. Daar is ander items in B wat wel uit 'n metaal of allooi in A genoem, vervaardig

sal/.....

sal wees, maar daar staan die vervaardigde produk teenoor die ruwe materiaal en het ons nie met eenselwigheid te doen nie. Ek sou aarsel om op grond van die enkele duplikasie van silikon in die twee Bylaes, wat waarskynlik, net soos die duplikasie van "olifantskrapers" in Bylae B, per incuriam ingesluip het, aan die verdeling in twee Bylaes 'n ander dan die reeds genoemde betekenis en uitwerking toe te skryf.

Dit is teen hierdie agtergrond van doel en samehang van die kennisgewing as geheel dat item (8) oorweeg moet word. Daarin word genoem, benewens silikon,"legerings wat minstens 3.25 persent silikon bevat." Die verwysing na legerings of allooie is weliswaar 'n algemene, wat letterlik geneem betrekking sou hê op enige allooi wat ook al, mits dit 3.25 of meer persent silikon bevat, maar uit hoofde reeds van die samehang in die lys nie-ysterhoudende stowwe waarin dit voorkom, ~~xxxxxxxxxx~~ ondergaan hierdie algemeenheid 'n beperking. In items (1) en (4) onder dieselfde hoof word nl. allooie, ertse, konsentrate en verbindings van 'n twaalftal stowwe reeds gedek, asook vervaardigde en halfvervaardigde artikels wat een of meer daarvan bevat, sonder vermelding van enige silikon-inhoud. Om ook hierdie allooie by item (8) in te sluit sou volkome oorbodig wees, en die bedoeling kon nie gewees het om hul insluiting te beperk tot gevalle waarin hul genoemde persentasie silikon bevat nie./.....

nie. Hul val dus, ten spyte van die algemene bewoording, buite item (8). Om dieselfde rede sou laasgenoemde item nie op ysterallooie in die vorm van "ysterlegeringspoeier" slaan nie, wat in item (38) onder die hoof "Diverse" in B genoem word, en indien nie, sou dit ongerymd wees as dit wel sou slaan op "ysterlegerings" wat as item (e) onder die hoof "Kontroleur van Yster en Staal" in A verskyn. Dit sou trouens enigsins sonderling wees indien die wetgewer die verbod op uitvoer van ysterallooie in A, onder die seggenskap van die Kontroleur van Ysber en Staal, wou wysig deur 'n toegewing wat in B in die rubriek van voorrade onder die seggenskap van die Kontroleur van Nie-ysterhoudende Stowwe, terloops as 'n byvoeging by silikon aangedui word. Met hierdie beperkings op die algemeenheid van "legerings" in item (8), wil dit my voorkom dat die algemeenheid as sulks 'n onvaste uitgangspunt sou bied vir die gevolgtrekking dat hierdie item die verbod op allooie onder die ooreenstemmende hoof in A, ten gunste van bedoelde wyer groep lande wysig.

So'n gevolgtrekking sou ook resultate teweegbring wat bedenkings omtrent die juistheid daarvan laat ontstaan. A noem nie slegs die allooie van stowwe soos antimoon, chroom, lood, magnesium, mangaan, nikkel, tin en sink nie, maar ook hul ertse, en in sommige gevalle ook die konsentrate,

samestellings,/.....

samestellings,soute,oksiede en karbiede. Die wysiging deur item (8) in B sou egter slegs allooie tref. Die verbod op die uitvoer van hierdie stowwe in die vorm van erts of in enige ander vorm as die van allooie, sou onaangeroerd bly,onverskillig of hul al dan nie silikon bevat. Wat allooie betref wat geen of minder dan 3.25 persent silikon bevat, sou die vraag ontstaan of item (8), deur 3.25 persent of meer silikon as maatstaf te stel, die verbod op uitvoer sonder permit by implikasie ophef, en indien wel, dan sou hul vryelik uitgevoer kan word nie slegs na die wyer groep lande nie maar ook na ander lande. Indien nie,dan sou 'n skynbaar willekeurige verskil tussen sulke allooie en allooie met 'n hoër persentasie silikon getrek word. Met 'n aldus beperkte toegewing, gepaard met sulke gevolge, sou die wetgewer dan self die deur wyd oopstel vir ontduiking van die verbod ten aansien van allooie. 'n Uitvoerder sou al die verbode alloïmetale sonder beperking,na die wyere groep lande altans, kan versend, slegs deur hul saam te smelt, soos in hierdie geval met brons, lood, tin en sink gedoen is, en toe te sien dat hul 3.25 persent of meer silikon bevat.

Ek is geensins oortuig dat hierdie gevolge as die duidelike uitwerking van item (8) aanvaar moet word nie. Hoofsaak ook by hierdie item, is ~~vir~~ nie enige vergunning ten gunste van bepaalde lande nie, maar die verbod op uitvoer sonder permit na ander lande. Vir daardie verbod was dit nie nodig om

die/.....

die alloois reeds in A genoem, nogeens naas silikon in B te noem nie. Die uitdrukking "Silikon en legerings wat minstens 3.25 persent silikon bevat " wek die indruk dat die verbod hier gerig is nie soseer teen alloois nie as teen silikon as sulks, en dat die wetgewer hier nie juis alloois wou beheer nie, maar silikon. Al kom silikon wydverspreid in groot hoeveelhede voor, was dit en word dit nogtans klaarblyklik raadsaam geag om die uitvoer daarvan te beheer, soos verder blyk uit item (58) onder die hoof "Nywerheidschemikaliee" in B, wat verwys na sekere "silikon organise bestanddele", en uit item (1) onder die hoof "Diverse" in B, waar die slypmiddel "silikonkarbied" genoem word. En as dit eintlik die beheer van silikon wat hier beoog word, en nie soseer die beheer van alloimetale as sulks nie, dan bestaan daar deste minder rede om aan die meegaande vergurning ten gunste van bepaalde lande die uitwerking toe te ken van 'n intrekking van die verbod ten aansien van die uitvoer na daardie lande van spesifieke alloois uitdruklik in A genoem, vir die geval dat hul gemelde persentasie silikon bevat. So'n intrekking van 'n verbod onder A by wyse van 'n byvoeging in die silikon-item onder B, sou in elk geval so'n onbeholpenheid wees dat voorbedagtheid moeilik daaraan toegeskryf kan word. Was so'n intrekking werklik beoog, sou die items in A wat op alloois slaan heel waarskynlik anders bewoord gewees het, en sou item (8) in B vermoedelik 'n

meer/.....

meer direk gestelde ~~verbod~~ verband met daardie items getoon het.

Dit wil my daarom voorkom dat item (8) so uitgelê moet word dat dit nie slaan nie op die reeds uitdruklik beheerde allooie onder die hoof "Kontroleur van Nie-ysterhoudende Stowwe" in A genoem, waarop allooie waarvan die uitvoer sonder permit na die wyere groep lande (die plaaslike protektorate uitgesonderd) nie elders verbied word nie. So'n uitleg sou geen afbreuk aan die hoofdoel van die kennisgewing doen nie, en sou gevolg gee aan die duidelike oogmerk met die verdeling van die uitvoer-items onder A en B.

Na my mening slaag die appél met koste, en moet die uitspraak van die Hof a quo verander word na vonnis teen die eiser met koste, met inbegrip van die koste van die eksepsie.

1 costyn.

Van Blerk A.R.
Botha Wn.A.R. } Stem saam
Holmes Wn.A.R

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :

THE COLLECTOR OF CUSTOMS AND EXCISE,CAPE TOWN,

and

THE COMMISSIONER OF CUSTOMS AND EXCISE, Appellants

and

METAL SALVAGE COMPANY (PROPRIETARY) LIMITED. Respondent

Coram: Steyn C.J.,Schreiner, Van Blerk JJ.A.,Botha et Holmes,A.JJ.A.

Heard: 16th November, 1959. Delivered: 3-12-1959

J U D G M E N T

SCHREINER J.A. :- The respondent company, which I shall call "the company", a dealer in and exporter of metals, on the 15th of March 1956 sent to Table Bay Harbour for export to the United Kingdom 40 drums of metal belonging to it. The company described the goods in the "Bill of Entry-Export", which it was obliged to complete under section 107 of the Customs Act (No. 55 of 1955), as "Silicon Alloy Ingots containing over 3.25 (Sc. per cent) of silicon", adding the words "not subject to export permit." The Collector of Customs, authorised by the Commissioner, seized and detained the consignment under sections 124 and 126, 141(1) and 147(1)

of/.....

of the Act. It is unnecessary to set out those sections. It is clear that if the company's contention is correct the seizure and detention were unlawful, while if it is incorrect they were lawful. Their lawfulness depends on whether in terms of Government Notice No. 1515 of the 23rd July 1954 the export of the goods to the United Kingdom required a permit. By section 145 of the Act the onus of proving that goods have been lawfully exported or otherwise dealt with is on the owner or claimant of the goods.

The company sued the Collector and the Commissioner, whom I shall refer to together as "the Customs", in the Cape Provincial Division for an order directing them to return the goods to the company and for an order declaring that the goods might be exported to the United Kingdom without an export permit. The prayer for the declaration was dropped because under later regulations such export is, it seems, unquestionably illegal. Though reference was made in the course of the argument to the pleadings I do not think that they assist in the decision of the appeal. An exception taken by the company to the plea was overruled and the matter went to trial. The only evidence led was that of two experts, an analytical chemist in the service of the South African Mint and a metallurgist in the South African Bureau of Standards. Van WYK J. gave judgment for the company directing the Customs to return the goods to it. Against this order the

Customs/.....

Customs appeal to this Court.

Government Notice No. 1515 of the 23rd July 1954 was framed under certain War Measures that have persisted since the last war. It is headed "Consolidation and Relaxation of Export Control" and so far as material the operative part of the notice reads :-

"1. As from the date of publication of this Notice, none of the goods listed in Schedules A and B hereto shall be exported from the Union unless such goods are covered by an export permit..... provided that -

(a) in respect of the goods listed in Schedule A no export permit shall be required when such goods are exported to Basutoland, Swaziland and the Bechuanaland Protectorate;

(b) in respect of the goods listed in Schedule B no export permit shall be required when such goods are exported to the United Kingdom of Great Britain and Northern Ireland, or any British Dominion, Colony (except Hong Kong), Possession, Protectorate or Mandated Territory or the United States of America; and

(c) no permit in terms of this Notice shall be required in respect of the export of goods listed in Schedule C hereto."

Schedules A and B are made up of divisions bearing the titles of different Government officials, such as "Secretary for Agriculture", and "Controller of Iron and Steel". One argument addressed to us was based on the division entitled "Controller of Motor Vehicles" in both Schedules and was supported by reference to items in a division entitled "Miscellaneous". I shall refer to this argument later but the enquiry

was/.....

was mainly concerned with certain items in the two divisions entitled "Controller of Non-Ferrous Materials".

In Schedule A the items of the divisions are lettered, in Schedule B they are numbered. The crucial items are A (c), ~~and~~ A (m) and B (8) but some other items may be used to throw light on the problem.

From A I quote -

"(a) Aluminium in any form including scrap ~~metals~~,residues,ashes, powder or dust.

(b) Antimony and its alloys and ores.

(c) Brass, bronze, gunmetal and copper in any form including scrap,webbings,turnings,cuttings,swarf,sweepings,drosses, ashes, skimmings, slag and copper ore.

(d) Chrome and its alloys and ores.

~~(h) Chrome and its alloys and ores~~

(h) Magnesium and its alloys and ores.

(i) Manganese and its alloys and ores.

(k) Nickel, as follows :-

(ii)nickel metal and nickel base alloys in the form of ingots..

(v)transformer and choke laminations.....made of nickel metal or nickel base alloys.....

(l) Solder and white metal.....including scrap alloys comtaining tin.

(m) Silicon.

(o) Tungsten, as follows :-

(i) metals and alloys..... "

From B I quote -

"(1) Non-ferrous metals and alloys, in any form, of the following description :-

Bismuth/.....

Bismuth,germanium,cadmium,columbium(niobium),strontium,tantalium,titanium,vanadium,zirconium,lithium,mercury and potassium.

(8) Silicon and alloys containing 3.25 per cent or more of silicon."

Schedule C is headed "Commodities listed in Schedule A which may be exported without permits." It is not subdivided under the titles of Government officials. Its items are heterogeneous and many of them relate rather to the circumstances surrounding the user of the goods than to their intrinsic nature.

The evidence of the analytical chemist proved that samples of the ingots in question were composed of 71.40 to 78.92 % copper, 6.91 to 17.33 % lead, 4.18 to 4136 % silicon, 2.98 to 4.19 % tin, 2.70 to 4.80 % zinc, 0.11 to 0.19 % iron and small undetermined residues.

The metallurgist gave evidence that the ingots were bronzes, i.e. alloys of copper and tin, which on account of their silicon content would be called ~~xx~~ silicon bronzes. The evidence shows that there exist what are called standard specifications for various alloys and that in regard to silicon bronzes the permissible range of silicon content is 1.5 to 5 % on the British specification and 1 to 5 % on the American. The evidence also shows that the company's ingots do not conform to any known standard specifications for silicon bronze and that

it/.....

it is highly improbable that they would be commercially usable in their present composition. It might even, for some purposes presumably, be dangerous so to use them. The evidence also shows that it would be very difficult from a practical point of view to modify the contents by adding or subtracting particular constituents, so as to bring them within the range of the standard specifications. They could be resolved into their component elements in more ways than one, electrolysis being perhaps the most satisfactory method. Whether this could be done economically would depend on suchf factors as the price at which they could be acquired. The metallurgist was unable to suggest any reason why the figure 3.25 was selected as the minimum percentage for silicon content in B (8).

Coming back to the Schedules, it will be seen that they restrict, i.e. prohibit without permit, the export of goods falling within Schedule A (less goods falling within Schedule C) and goods falling within Schedule B. I shall, in what follows, disregard Schedule C, which is not for present purposes important. There is in relation to the restriction side of the notice no difference between Schedule A and Schedule B. Anything appearing in either Schedule or in both is restricted in respect of export. Nothing appearing in neither Schedule is restricted. There are two Schedules because there are differences in the treatment of (1) exports to the three South African Pro-

-tectorates, as they are commonly called, (2) exports to other countries of the Commonwealth (except Hong Kong) and the United States of America, and (3) exports to the rest of the world. So far as the rest of the world is concerned there is no relaxation of the permit requirements and the export of anything in Schedule A or Schedule B requires a permit. At the other end of the scale exports to the three Protectorates, because they are covered by both proviso (a) and proviso (b) to the notice, never require a permit. To cull an expression from the law of defamation, the coincidence of "the bane and the antidote" is complete. For the rest of the Commonwealth (excluding Hong Kong) and the United States of America there is an intermediate position. Taking the United Kingdom, the country concerned in the present appeal, if the goods in question fall under Schedule B, but not under Schedule A, it is again a case of the bane and the antidote coinciding - no permit is required. And the result is the same if the goods fall under both A and B for the exemption in B qualifies the prohibition resulting from A. Silicon is in both Schedules and may therefore be exported without permit to the United Kingdom. It is only if goods are included in Schedule A but not in Schedule B that they require a permit for export to the United Kingdom.

Applying the above considerations

to/.....

to the facts of the present case a permit would only be required for the export of the ingots if they fall under A (c), as being bronze, and do not also fall under B (8), as being an alloy containing 3.25 % or more of silicon.

So much was not questioned on behalf of the Customs. But it was argued that Schedule A and Schedule B were intended to be mutually exclusive and that, if that intention is treated as a basic and unassailable starting point, the alloys mentioned in B (8) must be alloys other than those appearing in Schedule A, including bronze.

The argument has this measure of plausibility that it would be natural to expect that Schedules A and B should be mutually exclusive. But it would only be natural because that would be elegant draughtsmanship. The legal result would be precisely the same whether there were perfect exclusiveness or complete inclusiveness, all the items of Schedule B being included in Schedule A.

The indications are clear that the requirements of elegance were not observed. The most obvious and the most important of such indications is the presence of silicon in both Schedules. I shall return to this feature presently but it is enough at this stage to say that it strikes at the root of the argument for the Customs. Silicon establishes beyond question

that/.....

that Schedules A and B are not mutually exclusive and, even if there were no clear case of other items appearing in both Schedules, this one item would suffice to destroy the logic of the Customs' case.

But we were referred to other indications less striking but nevertheless not without significance. In testing the correctness of the mutual exclusiveness principle contended for, recourse may be had to parts of the Schedules falling outside the non-ferrous materials division. For there is no reason to suppose that the same principles were not being applied throughout all parts of the Schedules. In Schedule A the division entitled "Controller of Motor Vehicles" opens with these phrases -

"The items specified below, when of non-sterling origin, whether imported in an assembled condition or in parts.
Note - See also Controller of Motor Vehicles - Schedule B."

There follows a list of kinds of motor vehicles and parts and there are conditions for the temporary export of motor vehicles other than motor cycles and the like. When one turns to the corresponding division of Schedule B there is nothing similar to the opening phrases. That division covers a list of motor vehicles and parts which is in some respects closely similar to the list included in the division in Schedule A but which also presents a number of differences. The division in

Schedule/.....

Schedule B includes more items than the one in Schedule A. In regard to the conditions for temporary export under Schedule B, the conditions apply to all kinds of motor vehicles, not excepting motor cycles and the like, as in Schedule A.

Prima facie there is here extensive overlapping between the two Schedules. Counsel for the Customs, to meet this difficulty, contended that there was really no overlapping at all, since it must be understood that, while the division in Schedule A applied only to items "when of non-sterling origin", the items in Schedule B applied only to items "when of sterling origin". The suggestion is ingenious and conceivably corresponds with what was intended. But in the absence of any supporting indication in the language I find it difficult to suppose that non-sterling origin goods were not to be exported without permit to either side of the Atlantic while sterling origin goods were to be freely exported to both. That may have been the intention but I can see nothing to make it at all likely. It seems antecedently more probable that the opening phrase about non-sterling origin was accidentally omitted in Schedule B and that both Schedules related only to goods of non-sterling origin - motor vehicles and their parts of sterling origin being freely exportable to any part of the world. This would leave a very high degree of overlapping. It is also possible that the

reference/.....

reference to the origin was deliberately omitted from Schedule B at some stage when the Schedules were being amended and the prohibition was being extended to motor vehicles whatever their origin, with exemption to the Commonwealth and the United States of America; instead of extending Schedule A the draughtsman achieved the same result by leaving out the reference to origin in Schedule B. There are doubtless other possibilities but none of them, in my view, entitled one to read these parts of the Schedules in any other way than according to their terms. And so read, they clearly show much overlapping. A notable example is the item "bulldozers" which appears under Motor Vehicles in both Schedules A and B, and also under "Miscellaneous" in Schedule B.

It is perhaps unnecessary to press the point further but our attention was directed to several items in the division entitled "Miscellaneous" in Schedule B which would certainly in some cases be made of brass. Cocks and Valves (item 10) and propellors (ite, 63) were given as examples. These, it was said, though made of brass and therefore figuring in Schedule A (c) could be exported to the Commonwealth or the United States of America.

One comes back then to the position that the Customs' contention that alloys mentioned in B (8) do not include alloys such as bronze which are mentioned in Schedule A

breaks/.....

breaks down because its foundation, the mutual exclusiveness of the Schedules, is unsound.

One can take the reasoning based on the item silicon further. It is not to be supposed that its inclusion in both Schedules is a printer's error. It would moreover not be put into A when it already appeared in B, for that would be pointless. Logically, and in the order of the appearance in the Government Notice, silicon in A (m) is followed by silicon in B (8). It could thus only have been put into the latter item by way of relaxation or exemption. And if that is so it is natural to suppose that the further words "and alloys containing 3.25 per cent or more of silicon" were put into the item in furtherance of the same purpose.

But the position becomes clearer still when one considers to what alloys B (8) could have effective application. Three, and only three, groups can be relevant to the present enquiry. They exhaust all possible alloys. They are -

(1) Those named in A ;

(2) Those named in B ;

(3) Those named in neither A nor B.

In regard to class (2) alloys, B (8) can clearly have no operation, for it is coextensive in restriction and relaxation with the items in B naming the class (2) alloys. The same applies to class (3)

alloys/.....

alloys. If it can be imagined that, although these alloys are not named in either A or B and are therefore, without B (8), unrestrictedly exportable to any part of the world, they become restricted by reason of the mention of the word "alloys" in B (8), then the fact that they are included in B and not in A has the effect that they can be exported to the United Kingdom without a permit. And the reference to 3.25 per cent of silicon has thus no more effective application than it has to class (3) alloys in the case of the named alloys in class (2). It is thus clear that the words "and alloys containing 3.25 per cent or more of silicon" can have no effective application except in relation to class (1) alloys - those named in A. The words used are general and apply to all alloys but the purpose of introducing them can only have been to qualify the restriction in relation to alloys named in A.

I have not referred directly to the meaning of "alloys" in B(8), because it is not in issue that the company's ingots are composed of an alloy on any acceptable meaning of that word, unless the Customs' contention holds good that certain alloys must be excluded for reasons not directly connected with the language of B (8).

It was apparently contended in the court below that alloys must be excluded from B(8) if they do not comply with the abovementioned standard specifications. In that form the contention was not advanced in this Court and indeed it could/.....

could hardly stand together with the contention that some alloys are excluded from B(8) and that the excluded alloys are the alloys mentioned in Schedule A. For on the latter contention alloys like bronze and brass which fall within Schedule A could not be exported to the United Kingdom without a permit, even if they conformed to standard specifications.

Much was said in the course of the argument about the probable purpose of the restrictions and the relaxations and it was sought therefrom to gain an insight into the proper interpretation to be given to B(8). Where the purpose of an enactment is reasonably clear it may of course provide a useful guide to the meaning of particular portions of it. But all we can say with confidence about the general purpose of the Government Notice is that it was intended to provide certain restrictions on export and also certain relaxations. The only safe guide to the scope of the restrictions and the relaxations which it was intended to provide is to be found in the language of the items themselves. All else seems to me to be guesswork. We are not in a position to say what was the reason for including a particular item in a particular Schedule in a particular form. Various items include maximal and minimal figures of size or percentages of contents. Why these were selected we do not know. The metallurgist witness, as I have said, could give no reason for fixing the figure 3.25 as a

minimum/....

minimum; for all that appears it might equally have been the maximum. Accordingly, to interpret B (8) in relation to the possible intention to conserve silicon - the Shorter Oxford Dictionary calls it the second commonest element - or to prevent its reaching possibly hostile hands seems to me to import dangerously speculative considerations. Since pure silicon can be exported without permit to the Commonwealth and the United States of America it is difficult to imagine why a permit should be required for its export to the same countries when it is a small part, but not too small a part, of an alloy. If the purpose of introducing the words "and alloys containing 3.25 per cent or more of silicon" had been to prevent the export even of small quantities of silicon in alloy form to countries outside the Commonwealth and America, it is difficult to see why any percentage was mentioned. It would be natural to say "any alloys containing silicon."

It may indeed be

said/.....

said, and I think, with better justification, that the purpose was to prohibit the export without permit not only of the non-ferrous elements mentioned in Schedule A but also of their alloys, and that though some relaxation was permitted in B (8) it was limited by considerations of what use would be likely be made of the alloys overseas. In this connection the silicon content might conceivably be a practical factor. In association with this line of reasoning the standard specifications were relied upon by counsel for the Customs in this Court. The suggestion was made that the purpose of the company or the buyers from it might somehow be relevant. The evidence regarding the standard specifications shows, it was argued, that in all probability the purpose was to restore the bronze to its constituent elements, and as copper, its principal component, could only be exported under permit, the free export of the ingots would tend to stultify the purpose of restricting the export of copper. But the sufficient answer to this contention is that there is not in Schedules A and B, so far at least as the non-ferrous materials division is concerned, anything to suggest that the purpose of the export was to be in any respect relevant. In my view it was wholly irrelevant. The regulating authority selected a certain form of regulation containing a certain figure, presumably upon

a/.....

a calculation that this would serve its purpose. If in relation to the commercial possibilities this was a miscalculation it cannot affect the present enquiry. There is no basis in this case for discovering a phrpose in the draughtsman to prevent the reclamation of the constituent elements of alloys and for limiting the operation of B (8) so as to give effect to such purpose.

To sum up, the issue should, in my view, be approached directly on these lines. Though the A and B Schedules ought for proper draughtsmanship to have been made mutually exclusive, this was certainly not done and it is not permissible to treat them as mutually exclusive because they are nearly mutually exclusive. The language of B (8) squarely covers the ingots in this case and moreover it is probable, if not indeed certain, that the reference to alloys in B (8) was to the alloys in A, in respect of which alone it could be effective.

I conclude therefore that the company discharged the onus of showing that the ingots should not have been seized or detained and that the appeal should accordingly be dismissed.

3.12.59